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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,392	12/15/2000	William T. Dalebout	13914.632	1890

7590

10/07/2002

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EXAMINER

AMERSON, LORI BAKER

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 10/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/737,392	<b>Applicant(s)</b> DALEBOUT ET AL.	
	<b>Examiner</b> Lori Baker Amerson	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-36 is/are allowed.
- 6) ☒ Claim(s) 1-3, 37-41 and 2024 is/are rejected.
- 7) ☒ Claim(s) 4-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

***Response to Arguments***

1. Applicant's arguments with respect to claims 1-3, 20-24, and 37-41 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- a. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughn [US Patent 5,062,629]. Vaughn discloses an exercise platform having a base (12); a board (26) upon which a user stands; and an moveable hub (16) where a first end of the hub is indirectly coupled to the base and a second end to the board and the hub flexes to cause the board to tilt in any direction (fig. 2).
- b. Claims 21-24 and 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughn as applied to claim 1 above, and further in view of Brown [US Patent 3,427,019]. Vaughn discloses all of the limitations of the claimed invention except for a stretched handle held by a user and coupled to the platform to modify the nature of the platform. Brown teaches an exercise mechanism (18b) comprising a stretchable handle that is coupled to the board (figure 1) and a first end of the handle is held by a user and the second end is coupled to the board and causes the board to tilt (col. 3, lines 24-30).

As to claim 37, Vaughn discloses an exercise platform having a base (12); a board (26) upon which a user stands; and a flexible hub (16) where a first end of the hub is indirectly coupled to the base and a second end to the board and the hub causes the board to tilt in any direction (fig. 2). See the rejection above regarding the handle.

As to claim 38, Adjustability, where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

As to claims 39-41, see the rejection above regarding the handle or handles.

c. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughn as applied to claim 1 above and further in view of Romero [US Patent 5,897,474]. Vaughn does not disclose a non-slip material on the upper surface of the board. However, Romero teaches in the same field of endeavor, in figure 1, col. 6, lines 65-66 a non-slip surface on the board to prevent injury. It would have obvious to one of ordinary skill in the art and common knowledge in the exercise industry to place a non-slip surface on an exercise device to prevent injury to the user while the device is in use.

### ***Allowable Subject Matter***

3. Claims 4-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 25-36 is allowed. The prior art of record fails to teach or suggest a wobbly apparatus or exercise platform comprising a flexible connector having a top abutment member set and adjuster that has one or more bottom abutment member sets that are aligned together to restrict movement of the board.

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**Conclusion**

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Baker Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Monday thru Friday from 8-5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerome Donnelly can be reached on 703.308.2668. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

A handwritten signature in black ink that reads "Lori Baker Amerson". The signature is written in a cursive, flowing style.

Lori Baker Amerson  
September 30, 2002